

Message Text

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ACTION OES-06

INFO OCT-01 ARA-06 EUR-12 ISO-00 AF-08 EA-07 NEA-10 STR-04

ITC-01 OIC-02 ACDA-07 AGR-05 AID-05 CEA-01 CEQ-01

CG-00 CIAE-00 CIEP-01 COME-00 DLOS-06 DODE-00 DOTE-00

EB-07 EPA-01 ERDA-05 FEAE-00 FMC-01 TRSE-00 H-02

INR-07 INT-05 IO-13 JUSE-00 L-03 NSAE-00 NSC-05

NSF-01 OMB-01 PA-01 PM-04 PRS-01 SP-02 SS-15 USIA-06

SAL-01 /164 W

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P 201442Z JUL 76

FM AMEMBASSY WARSAW

TO SECSTATE WASHDC PRIORITY 2746

INFO AMEMBASSY MOSCOW PRIORITY

AMEMBASSY COPENHAGEN PRIORITY

AMEMBASSY MEXICO PRIORITY

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COPENHAGEN FOR REGIONAL FISHERIES OFFICER

E.O. 11652: N/A

TAGS: EFIS, PLOS, PL

SUBJECT: US/POLISH NEGOTIATIONS GOVERNING INTERNATIONAL
FISHERIES AGREEMENT (GIFA)

REF: (A) WARSAW 5030, (B) STATE 175384, (C) MONTREAL 797

1. SUMMARY: DURING A CALL ON VICE MINISTER WISNIEWSKI ON
JULY 19, WISNIEWSKI ACCEPTED THE DELETION OF PARAGRAPH 3
OF THE PREAMBLE OF THE GIFA. WISNIEWSKI SAID THAT THE POLES
WOULD WORK ON ALTERNATIVE LANGUAGE FOR THE ECONOMIC COOPER-
ATION PARAGRAPH AND THAT THE POLISH INTENTION WAS TO PROVIDE
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FOR THE ADMINISTRATIVE (AS DISTINCT FROM FINANCIAL)

FACILITATION OF JOINT INDUSTRIAL/COMMERCIAL UNDERTAKINGS. AFTER EMBASSY OFFICERS EXPLAINED USG DIFFICULTIES WITH TREATING PRE-COURT SETTLEMENTS IN THE AGREEMENT, WISNIEWSKI SAID HIS PRIMARY CONCERN WAS THAT ALL BUT THE FIRST SENTENCE OF ARTICLE X OF THE GIFA BE DELETED AND THAT OUT-OF-COURT SETTLEMENTS BE POSSIBLE UNDER THE AGREEMENT. WISNIEWSKI SAID THAT THE JOINT CLAIMS BOARD SHOULD BE CONTINUED IN SOME FORM. HE SUGGESTED THAT TWO JOINT COMMISSIONS BE CREATED UNDER THE AGREEMENT, ONE FOR CONCILIATION OF DISPUTES, THE OTHER FOR FACILITATION OF ECONOMIC/INDUSTRIAL COOPERATION. WISNIEWSKI ASKED THAT, IF AT ALL POSSIBLE, WE PROVIDE BEFORE JULY 31 AN INDICATION OF THE KINDS OF FEES TO BE CHARGED (PER VESSEL, TRIP, RIG, SIZE OF CATCH, OR ADMINISTRATIVE EXPENSE) AND THE GENERAL NATURE OF ANY ADDITIONAL INFORMATION NEEDED FOR LICENSE APPLICATIONS. END SUMMARY.

2. EMBASSY OFFICERS CALLED ON EDWIN WISNIEWSKI, VICE MINISTER FOR FOREIGN TRADE AND MARITIME ECONOMY, ON JULY 19 TO CLARIFY OUTSTANDING QUESTIONS ON THE PROPOSED GIFA, AS REQUESTED IN REF B. REF A REPORTS ON THE SCHEDULE PROPOSED BY WISNIEWSKI FOR THE NEGOTIATIONS. EMBASSY OFFICERS ASKED FOR CLARIFICATION OF THE POLISH REQUEST TO INCLUDE THE AGREEMENT LANGUAGE CONCERNING ECONOMIC COOPERATION. WE EXPLAINED THAT, ALTHOUGH WASHINGTON HAD NOT CATEGORICALLY RULED OUT ANY MENTION OF ECONOMIC COOPERATION, THE USG IN PRACTICE DOES NOT REFER TO THIS SUBJECT IN FISHERIES AGREEMENTS, AND WE ARE RELUCTANT TO CREATE A PRECEDENT. SPECIFICALLY, THE USG CANNOT COMMIT PRIVATE PARTIES TO COOPERATION. COULD THE VICE MINISTER CLARIFY THE PURPOSE BEHIND THE POLISH PROPOSAL, PARTICULARLY CONCERNING THE "FACILITATION" OF JOINT US-POLISH ENTERPRISES? WISNIEWSKI SAID THAT THE WORKING SUGGESTED IN MONTREAL WAS DONE HASTILY AND DID NOT REPRESENT A FINAL PROPOSAL. HE REALIZED THE DIFFERENCE BETWEEN THE US AND CANADIAN INDUSTRIES AND WOULD NOT EXPECT TO ADOPT THE EXACT WORKING OF THE CANADIAN AGREEMENT. WISNIEWSKI SAID THE POLISH INTENTION WAS TO INCORPORATE UNDER SOME SPECIFIC REFERENCE TO ECONOMIC/INDUSTRIAL COOPERATION UNDER THE AGREEMENT, AND NOTED THAT THE FORD-LIMITED OFFICIAL USE

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GIEREK COMMUNIQUE OF 1975 INCLUDED A SPECIFIC REFERENCE TO SUCH COOPERATION. HE EXPLAINED THAT THE POLES SOUGHT ASSURANCES THAT COOPERATION AMONG US AND POLISH ENTERPRISES WOULD BE ADMINISTRATIVELY FACILITATED, THAT IS, THAT EFFORTS WOULD BE MADE TO MINIMIZE ANY ADMINISTRATIVE OR REGULATORY OBSTACLES TO SUCH COOPERATION WHICH MIGHT ARISE UNDER THE IMPLEMENTATION OF THE NEW LEGISLATION. MR. LUKASIK, OF THE LEGAL AFFAIRS OFFICE OF THE MINISTRY OF FOREIGN AFFAIRS,

SAID THE POLES WERE IN NO WAY SEEKING FINANCIAL FACILITATION. WISNIEWSKI SAID THAT THE POLES WOULD PREPARE NEW WORDING FOR CONSIDERATION DURING THE NEGOTIATION AND ASKED THAT THE US DELEGATION DO THE SAME. EMBOFFS SAID IT MIGHT BE POSSIBLE TO ARRIVE AT MUTUALLY SATISFACTORY LANGUAGE. THE POLES SHOULD UNDERSTAND, HOWEVER, THAT THE MERE EXISTENCE OF ADMINISTRATIVE OR LEGAL BARRIERS TO INDUSTRIAL-COOPERATION PROJECTS COULD NOT CONSTITUTE A VIOLATION OF THE AGREEMENT. LATER IN THE MEETING WISNIEWSKI RETURNED TO THE QUESTION OF ECONOMIC COOPERATION AND SUGGESTED THAT A JOINT COMMISSION TO FACILITATE ECONOMIC COOPERATION MIGHT BE ESTABLISHED UNDER THE AGREEMENT. HE SAID THAT SUCH A COMMISSION HAD BEEN CREATED WITH THE CANADIANS AND SUGGESTED THAT IT MIGHT CONSIST OF REPRESENTATIVES OF STATE, COMMERCE, AND THE RESPECTIVE BOARDS OF FISHERMEN ON THE US SIDE. EMBOFFS ASKED WHETHER THIS PURPOSE COULD NOT BE EQUALLY SERVED UNDER ARTICLE XI OF THE GIFA, AND WISNIEWSKI REPLIED THAT ARTICLE XI REFERRED ONLY TO SCIENTIFIC COOPERATION. EMBOFFS SAID THEY WOULD RELAY THE VICE MINISTER'S SUGGESTIONS CONCERNING THE JOINT COMMISSION.

3. EMBOFFS SAID THAT THE USG COULD NOT COMMIT ITSELF TO OUT-OF-COURT SETTLEMENT OF CASES WHICH ARE VIOLATIONS OF US LAW. WHAT DID THE POLES HAVE IN MIND WITH REGARD TO THE MENTION OF "PRE-COURT SETTLEMENT" OF DISPUTES? WISNIEWSKI SAID THAT HE HAD THREE POINTS IN MIND. FIRST, HE HOPED THAT ALL OF ARTICLE X, WITH THE EXCEPTION OF THE FIRST SENTENCE, COULD BE DELETED FROM THE GIFA. HE EXPLAINED THAT THE POLES DID NOT QUESTION THE APPLICATION OF US LAW, BUT THAT THEY DID NOT WISH TO INCORPORATE A DETAILED DESCRIPTION OF PENALTIES AND PUNISHMENT INTO THE AGREEMENT. SPECIFIC REFERENCE TO THE US LEGISLATION WOULD BE MADE IN LIMITED OFFICIAL USE

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PARAGRAPH TWO OF THE PREAMBLE, AND A DETAILED DESCRIPTION OF THE PENALTIES DID NOT SEEM NECESSARY. SECOND, WISNIEWSKI SAID HE HOPED THAT POLISH AGENTS COULD BE AUTHORIZED TO POST BOND OR TAKE OTHER STEPS WHICH COULD SERVE IN LIEU OF ACTUAL SEIZURE AND DETENTION OF POLISH VESSELS BY THE COAST GUARD. THIRD, WISNIEWSKI SAID IT WOULD BE GOOD TO HAVE SOME SORT OF CONCILIATORY BOARD OR JOINT COMMISSION, LIKE THAT UNDER THE OLD AGREEMENT, TO HELP SETTLE DISPUTES ON DAMAGE TO FISHING GEAR. HE SAID SUCH A BODY WOULD NOT CONCERN ITSELF WITH THE APPLICATION OF US LAW, BUT WITH THE CONCILITATION OF DISPUTES AMONG COMMERCIAL PARTIES. EMBOFFS SAID THEY DID NOT HAVE INSTRUCTIONS CONCERNING DELETION OF PART OF ARTICLE X, BUT NOTED THAT THIS POSSIBILITY WAS UNDER CONSIDERATION. EMBOFFS SAID THAT THE GRANTING OF SPECIAL POWERS TO POLISH AGENTS, AS SUGGESTED BY THE VICE MINISTER,

WOULD BE DIFFICULT OR IMPOSSIBLE. WE EXPLAINED THAT, AS FAR AS WE KNEW, THE COAST GUARD CANNOT ASSESS PENALTIES OR FINES WITHOUT DUE PROCESS, AND THE AGENTS WOULD PROBABLY HAVE TO GO THROUGH SOME JUDICIAL PROCEEDINGS IN ORDER TO GAIN RELEASE OF A SEIZED VESSEL. EMBOFFS ALSO NOTED THAT ARTICLE X WOULD PROVIDE FOR PROMPT RELEASE OF THE VESSELS UPON POSTING OF BOND.

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ACTION OES-06

INFO OCT-01 ARA-06 EUR-12 ISO-00 AF-08 EA-07 NEA-10 STR-04

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NSF-01 OMB-01 PA-01 PM-04 PRS-01 SP-02 SS-15 USIA-06

SAL-01 /164 W

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P 201442Z JUL 76

FM AMEMBASSY WARSAW

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EMBOFFS SAID THAT, WITH REGARD TO THE CONCILIATORY SETTLEMENT OF DISPUTES, THE US DELEGATION HAS INDICATED THAT IT COULD SUPPORT A CONTINUATION OF THE SETTLEMENT-CLAIMS BOARD, PROVIDED THAT SECTION SIX OF ANNEX I WERE DELETED, MEANING THAT THE BOARD WOULD NOT BE CONCERNED WITH PERMIT-APPLICATION PROCEDURES.

4. WISNIEWSKI READILY AGREED TO THE DELETION, IN ITS ENTIRETY, OF PARAGRAPH THREE OF THE PREAMBLE, WHICH REFERRED TO THE DELIBERATIONS OF THE UN LAW OF THE SEA CONFERENCE.

5. EMBOFFS SAID THAT, UNFORTUNATELY, WE COULD SUPPLY NO FURTHER INFORMATION CONCERNING POLISH QUESTIONS ON THE LEVEL OF LICENSE FEES WHICH ARE CONTEMPLATED NOR ON WHAT LIMITED OFFICIAL USE

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"OTHER INFORMATION" MIGHT BE REQUIRED ON LICENSE APPLICATIONS. EMBOFFS ADDED THAT AMBASSADOR RIDGWAY HAD REQUESTED THIS INFORMATION ON AN URGENT BASIS AND THAT WE HOPED WE MIGHT BE ABLE TO GIVE THE POLES SOME INDICATION BEFORE THE ARRIVAL OF THE US DELEGATION. WISNIEWSKI SAID HE APPRECIATED THE PROBLEMS WHICH THE USG MUST BE ENCOUNTERING IN PREPARING FOR IMPLEMENTATION OF THE NEW LEGISLATION. HE SAID THAT HE DID NOT REQUIRE A DETAILED LISTING OF SPECIFIC FEE LEVELS NOR AN EXHAUSTIVE LIST OF THE "OTHER INFORMATION" WHICH MIGHT BE REQUIRED FOR LICENSES. HE SAID HE WOULD NEED, HOWEVER, AN INDICATION OF THE TYPES OF FEES AND OTHER INFORMATION WHICH WE HAD IN MIND. FOR EXAMPLE, IF FEES WERE TO BE ASSESSED IN ORDER TO COVER ADMINISTRATIVE COSTS, THIS WOULD ALLOW THE POLES TO MAKE A GENERAL CALCULATION OF THE COSTS. IF THE FEES WERE TO BE MADE ON THE BASIS OF SIZE OF CATCH, THE NUMBER OF VISITS BY EACH VESSEL, OR PER RIG OF VESSEL, OTHER CALCULATIONS COULD BE MADE. WISNIEWSKI REPEATED THAT HE WOULD NEED TO HAVE SOME IDEA OF THE COSTS AND VALUE OF THE AGREEMENT BEFORE ENTERING INTO IT. HE SAID THAT HE WAS CONCERNED THAT REQUESTS FOR "OTHER INFORMATION" NOT BECOME SO EXTENSIVE OR TRIVIAL THAT SUCH INFORMATION WOULD NOT BE READILY AVAILABLE CONCERNING POLISH VESSELS OR CREWS.

6. WISNIEWSKI SAID THAT US AND POLISH SCIENTISTS WHO MET IN GDYNIA EARLIER THIS MONTH HAD APPARENTLY REACHED AN ACCEPTABLE UNDERSTANDING ON ANNEX II ON THE BASIS FOR SUBMISSION OF BIOSTATISTICAL INFORMATION. ANNEX II WOULD, OF COURSE, HAVE TO BE APPROVED RUING THE NEGOTIATIONS, HE SAID.

7. WISNIEWSKI SAID HE WOULD ALSO EXPECT TO REACH SOME AGREEMENT WITH AMBASSADOR RIDGWAY ON THE TENTATIVE ALLOCATION FOR POLAND IN 1977, AS HAD BEEN DISCUSSED IN MONTREAL.

8. EMBASSY COMMENT: THE EMBASSY BELIEVES THAT IT WOULD BE HELPFUL TO INCLUDE REVISED LANGUAGE ON ECONOMIC COOPERATION IN THE GIFA. THE POLISH NEGOTIATORS HAVE ACCEPTED THE FACT THAT THE AGREEMENT WOULD ONLY GIVE POLAND THE RIGHT TO APPLY FOR AN ALLOCATION, BUT THIS WILL NOT MAKE THE AGREEMENT EASY TO SELL IN POLAND, PARTICULARLY IF WE ARE

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NOT ABLE TO PROVIDE CLEAR INFORMATION ON THE LEVEL AND TYPES OF FEES CONTEMPLATED. WE DO NOT THINK IT WOULD BE NECESSARY, AND IT WOULD PROBABLY NOT BE DESIRABLE AS A PRECEDENT, TO PROVIDE SPECIFICALLY FOR A JOINT COMMISSION OR OTHER BODY FOR ECONOMIC COOPERATION. IF WE CAN DEVELOP ACCEPTABLE WORDING FOR THE "ADMINISTRATIVE FACILITATION" OF COMMERCIAL VENTURES, SUCH AS THE POLES HAVE IN MIND, THIS COULD BE LISTED AS ONE OF THE PURPOSES FOR CONSULTATION AS PROVIDED IN ARTICLE XII OF THE DRAFT GIFA. REFERENCE TO ECONOMIC COOPERATION MIGHT ALSO BE MADE IN THE PREAMBLE. WE MIGHT ALSO INFORM THE POLES THAT WE WOULD BE PREPARED TO CONSIDER THE FORMATION OF AN AD HOC GROUP OF ECONOMIC COOPERATION IF THESE CONSULTATIONS DEMONSTRATED THE NEED FOR ONE.

9. WISNIEWSKI WAS AT HIS FIRMEST IN SAYING THAT ALL BUT THE FIRST SENTENCE OF ARTICLE X OF THE GIFA SHOULD BE DELETED. THIS STEP OR ANOTHER CHANGE WHICH MEETS THE POLISH POSITION WILL PROBABLY HAVE TO BE TAKEN IF WE ARE TO REACH AGREEMENT.

10. WITH REGARD TO WISNIEWSKI'S COMMENTS ON THE OUT-OF-COURT ROLE OF POLISH AGENTS, IT WOULD BE HELPFUL TO MAINTAIN SOME REFERENCE IN THE GIFA TO THE PROMPT RELEASE OF VESSELS AND CREW FOLLOWING THE POSTING OF BOND. THE DEPARTMENT MAY ALSO WISH TO EXPLORE WHETHER THERE ARE ANY TYPES OF OFFENSES IN WHICH POLISH AGENTS COULD POST BOND WITH THE COAST GUARD WITHOUT UNDERGOING ACTUAL DETENTION OF THE POLISH VESSEL. SUCH A PROCEDURE WOULD PROBABLY NOT CONSTITUTE A COMMITMENT TO AN OUT-OF-COURT SETTLEMENT, BUT MIGHT BE BENEFICIAL TO THE POLES.

11. CONTINUATION OF THE JOINT CLAIMS BOARD FOR CONCILIATION OF COMMERCIAL DISPUTES, SUCH AS DESTRUCTION OF GEAR, SHOULD BE PROVIDED FOR AS SUGGESTED PARA 3 REF B.

12. IT MIGHT ALSO BE HELPFUL TO INDICATE THAT THE ASSESSMENT OF FEES WOULD BE DONE ON A NONDISCRIMINATORY BASIS. THIS WOULD STRENGTHEN THE REFERENCE IN ARTICLE VI TO "REASONABLE" FEES AND COULD BE HELPFUL IF WE ARE NOT YET ABLE TO SPECIFY FEE LEVELS OR STRUCTURE. END COMMENT.
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DAVIES

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